IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.1.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ
and
THE HONOURABLE MR.JUSTICE S.SARDAR ZACKRIA HUSAIN

Writ Appeal Nos.2485 and 2487 of 1999, 1696 and 1697 of 2000 and 2504 of 2004
and
W.A.M.P.No.4598 of 2004 in W.A.No.2504 of 2004.

W.A.Nos.2485 & 2487 of 1999
The Commissioner,
Corporation of Chennai,
Chennai-3. .. Appellant in both the W.As.

Vs.

1. Mrs.Lakshmi Bai (died)
2. R.Sivasankara Mehta
(substituted as LR of the deceased R.1 as per the order dated 28.12.2004 made in W.A.M.P.No.1827 of 2004) .. 2nd Respondent in W.A.2485/1999
.. First Respondent in W.A.2487/1999

3. The Government of Tamil Nadu
rep. by its Secretary
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai-9. .. 3rd and 2nd Respondents in both the W.As respectively.

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W.A.Nos. 1696 and 1697 of 2000
The Secretary,Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St. George, Madras-9. .. Appellant

Vs.

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1. Mrs.Lakshmi Bai .. First Respondent in W.A.1696/2000

   R.Sivasanka Mehta .. First Respondent in W.A.1697/2000

2. The Commissioner, Corporation of Chennai, Chennai-3. .. Second respondent in both the W.As.

W.A.No.2504 of 2004

Chennai Metropolitan Development Authority, rep. by its Member Secretary, Egmore, Chennai-8. .. Appellant in W.A.No.2504/2004

Vs.

1. P.R.Bashyam
2. The State of Tamil Nadu, rep. by its Secretary to Government Housing and Urban Development Department, Fort St. George, Madras-9. .. Respondents in W.A.No.2504/2004.

Writ Appeals preferred under Clause 15 of Letters Patent against the Order of WPs.6686/97, 6687/97, dt. 2.4.99 and 14154/04 dt. 19.5.2004 respectively.

Mrs. P.Bhagyalakshmi : For appellant in W.As.2485 & 2487/1999 & R.2 in 1696/2000, 1697/2000.

Mr.Ramanlaal, : For LR of the first respondent in W.A.No.2485/1999

Mr.K.Chandru S.C. for M/s.R.Syed Mustafa: For first respondent in W.A.Nos.2487/1999; W.A.1696, 1697/2000; & W.A.2504/2004.

Mr.M.Mahalingam, Govt. Advocate : For 2nd and 3rd respondent in W.A.Nos.2485 & 2487/1999 R.2 in W.A.2504/04 & For appellants in W.As.1696 & 1697/2000

Mr.Somaiyaji, AAG for Mr.A.Suresh : For Appellant in W.A.2505/2004.

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COMMON JUDGMENT

V.KANAGARAJ,J

Writ Appeal Nos.2485 and 2487 of 1999 have been preferred by the Commissioner, Corporation of Chennai and the W.A.Nos.1696 and 1697 have been preferred by the Secretary to Government, Municipal Administration and Water Supply Department,Chennai against the common order of the single Judge of this Court dated 24.9.1999 respectively made in W.P.Nos.6686, 6687 of 1997 and the W.A.No.2504 of 2004 has been preferred by the Member Secretary, Chennai Metropolitan Development Authority, Chennai against the order of the single Judge of this Court dated 19.5.2004 made in W.P.No.14154 of 2004.

For the sake of convenience hereinafter Writ Appeal Nos.2485 and 2487 of 1999 and 1696 and 1697 of 2000 are referred to as the first four appeals and Writ Appeal No.2504 of 2004 is referred to as the fifth appeal.

2. Tracing the history of the above Writ Appeals having come to be preferred before this Court, it comes to be known that the Special Collector for Land Acquisition, Madras has passed an Award dated 3.1.1949, thereby acquiring the lands in R.S.No.324/2 and 324/3 of Triplicane Village respectively measuring 5 grounds and 416 sq.ft. and 5 grounds and 567 sq.ft. under the Land Acquisition Act, for the Town Planning Schemes i.e. for the purpose of formation of a road, from Thiruvalargal R.Neelakanta Mehta and Sivasankara Mehta and paid a compensation of Rs.34,689/-; that on a reference under Section 18 of the said Act, the the same was enhanced to Rs.90,561/- as per the judgment dated 23.12.1949 by the City Civil Court; that though both the lands in S.No.324/2 and 324/3 were acquired, only the land in S.No.324/3 was utilised by forming a road connecting the Mount Road with Peters Road terminal, while S.No.324/2 was left vacant and not utilised by the Corporation of Madras for the purpose for which it was acquired; that Thiruvalargal R.Neelakanta Mehta and Sivasankara Mehta (Ex.Meyor of Madras) have made representation to the Government requesting to re-convey the lands in R.S.No.324/2 in Triplicane Village measuring 5 grounds and 416 sq.ft. (12416 sq. ft.), agreeing to pay the cost of the land received by them with interest at 6% from the date of receipt of compensation; that the Government after examining the case in detail by an order in G.O.Ms.No.48, Municipal Administration and Water Supply Department dated 10.3.1995 has passed an order directing the Commissioner of Corporation, Madras, to release the above land in S.NO.324/2 of Triplicane Village measuring 5 grounds and 416 sq. ft. (12416 sq.ft.) to the ex-owners Thiruvalargar R.Neelakanta Mehta and Sivasankara Mehta or their legal heirs or their nominees after observing all the formalities and under proper land delivery

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receipt.

3. It further comes to be seen that the Government of Tamil Nadu has passed yet another order in G.O.Ms.No.152, Municipal Administration and Water Supply Department dated 25.7.1995 thereby cancelling the earlier order passed in G.O.Ms.No.48, Municipal Administration and Water Supply Department dated 10.3.1995 on ground that the Commissioner, Corporation of Madras in his letter dated 5.6.1995 has stated that the land under reference can be better utilised for the purpose of parking of vehicles, for which there is a great demand because of manifold increase in the traffic lead in the part of the city.

4. Challenging the said Government Order, the land owners have filed Writ Petition Nos.6686 and 6687 of 1997 on the file of this Court and the learned single Judge of this Court by order dated 24.9.1999 made in W.P.Nos.6686 and 6687 of 1999 had allowed the said writ petitions directing the Commissioner, Corporation of Madras to give effect to the Government Order in G.O.Ms.No.48, Municipal Administration and Water Supply Department dated 10.3.1995 within four weeks from the date of that order. Aggrieved by the said order, the second respondent therein has come forward to prefer W.A.Nos.2485 and 2487 of 1999 and the first respondent therein has come forward to prefer W.A.Nos.1696 and 1697 of 2000 on certain ground as brought forth in the grounds of appeals.

5. Likewise, the land in S.No.195/1, Koyambedu Village, measuring 1.70 acres belonging to the first respondent in W.A.No.2504 of 2004 was acquired in the year 1982 by the Government for K.K. Nagar Scheme, out of which 1.07 acres of land has been utilised for the purpose it was acquired and the remaining 63 cents are kept vacant and hence the first respondent made representations to the Government on 4.6.2002 and 6.11.2002 requesting them to re-convey the land to him after receiving the compensation amount which was received by him in the earlier occasion with interest; that since the Government has not passed any order he has filed Writ Petition in W.P.No.38272 of 2002 on the file of this Court and this Court by order dated 4.6.2002 has directed the respondents therein to dispose of the representation of the petitioner therein dated 4.6.2002 within six weeks from the date of receipt of that order; that since no order has been passed by the Government, and since the adjacent lands were re-conveyed to the land owners viz., Viswanathan and Lalitha he filed W.P.No.14154 of 2004 on the file of this Court praying to direct the respondents therein to re-convey his land in S.No.195/1, Koyambedu Village, Chennai as contemplated u/s 48(B) of Land Acquisition Act and the learned single Judge of this Court by the order dated 19.5.2004 directed the respondents therein viz., the Secretary to Government of Tamil Nadu Housing and Urban Development Department, Chennai-9 and the Member Secretary, Chennai Metropolitan Development Authority,

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Egmore, Chennai-8 to re-convey the un-utilised lands of the petitioner therein after receiving the actual amount of compensation together with interest at the rate of 9% per annum. Aggrieved by the said order, the second respondent therein has come forward to prefer the W.A.No.2504 of 2004 on certain grounds as brought forth in the grounds of appeal.

6. During arguments the learned senior counsel for the appellants in W.A.Nos.2485 and 2487 of 1999, the learned Government Advocate for the appellants in W.A.Nos.1696 and 1697 of 2000 would submit that taking into consideration of the public interest, the Government has rightly issued G.O.Ms.No.152, dated 25.7.1995 cancelling the earlier G.O.Ms.No.48 dated 10.3.1995 for re-conveyance; that since the lands were required under the provisions of the Land Acquisition Act, which culminated in an award on 3.1.1949, the compensation amount was enhanced to Rs.90,561/- under Section 18 of the Land Acquisition Act and the same was received by the land owners and since the lands were acquired for the purpose of Town Planning and portion of land to the extent of 5 grounds was utilised for the formation of the Road, and the appellant Corporation has proposed to utilise the remaining lands for construction of Office-cum-shopping complex, and the land can be better utilised for the purpose of parking of vehicles for which there is great demand in view of manifold increase in the traffic, which is part of the public purpose for which the land was acquired originally; that the land was acquired in the year 1948 and compensation was paid in the year 1949, the request for re-conveyance was made in the year 1962 and the Government order for re-conveyance of vacant land was passed on 10.3.1995 and the same was kept in abeyance on 6.6.1995 and was subsequently cancelled on 27.9.1995 and therefore, the cancellation of release of land is legal and valid. On such arguments they would pray to set aside the order of the learned single Judge of this Court.

7. At this juncture, the learned senior counsel for the appellants would cite a judgment of the Hon'ble Apex Court reported in 2004 (5) CTC 506 (Govt. of A.P. and another vs. Syed Akbar) wherein it has been held:

> "(1) under Section 16 of the Land Acquisition Act, the land acquired vests in Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilised for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order."

8. On the other hand, on the part of the the learned Senior Counsel appearing for the first respondent in the first four appeals, would submit that the re-conveyance sought for is only

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regarding the remaining portion unused by the Government for any purpose much less for the purpose that it has been acquired as declared in the 4(1) Notification in the year 1948 for acquisition of the lands concerned with the first four appeals and in spite of the lapse of more than half a century from the time of initiation of proceedings, the beneficiaries have not made use of the lands acquired and therefore, giving effect to Section 48-B of the Land Acquisition Act 1996.

9. The learned senior counsel appearing for the first respondent in the first four appeals would further submit that it is the Tamil Nadu amendment that has been introduced as Section 48A and B providing for the compensation to be awarded when land is not acquired within two years under the amended Section 48A of the Act, further providing for transfer of the land to the original owner in certain cases so far as it is concerned with Section 48B. The learned Senior Counsel would further point out that these amendments have not been introduced in the Land Acquisition Act by the other States and therefore, these special provisions could be given effect to only so far as it is concerned regarding the acquisitions made in the context of Tamil Nadu and not any other State pertaining to which the judgment cited by the appellants is concerned and therefore that judgment cannot be applied to the facts of the cases in hand.

10. At this juncture, the learned senior counsel appearing for the first respondent would cite a judgment reported in 2004(7) SCALE 481 (B.E.M.L.Employees House Building Co-operative Society Ltd., vs. State of Karnataka & others) wherein it has been held:

> "All exercise of statutory discretion must be based on reasonable grounds and cannot lapse into arbitrariness or caprice which is anathema to the Rule of Law envisaged in Article 14 of the Constitution. The facts placed on record do not indicate that the case of the fifth Respondent was similar, if not identical to that of the other land owners, whose lands were dropped from the acquisition proceedings. Neither the appellant, nor the State Government has been able to show us any rational distinction between the case of the fifth Respondent and the cases of the other land owners, whose lands were excluded from the acquisition. When this is so, it appears to us that the vice of hostile discrimination infects and vitiates the decision taken by the State Government to continue with the acquisition against the fifth Respondent's land."

On such arguments, the learned senior counsel appearing for the first respondent in the first four appeals would pray to dismiss the above appeals as without merit.

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11. So far as it is concerned with the fifth appeal preferred in W.A.No.2504 of 2004, it comes to be seen that from the acquired land in an extent of 1.70 acres comprised in S.No.195/1, Koyambedu village in the year 1982, by the first respondent, an extent of 63 cents has not been utilised for the purpose for which the acquisition was made by the Government and since this portion of the land is lying vacant un-utilised for any constructive purpose, the original owner has approached this Court praying to re-convey the same pursuant to the power vested upon the first respondent under Section 48B of the Land Acquisition Act, which has been introduced by virtue of the amendment of the said Act. The original owner in this regard would also cite another instance of an adjacent land owner from whom also the property has been acquired and for having not utilised for the purpose for which it was acquired on the part of the Government he approached the Court seeking the relief of re-conveyance and the learned single Judge granted the relief, which came to be confirmed by the Division Bench of this Court in W.A.No.461 of 2002 as per its judgment dated 26.2.2002 and this order also came to be confirmed by the Hon'ble Apex Court, thus the said order becoming final. It would further be argued that following the said judgment umpteen number of orders have been passed by this Court directing the authorities to re-convey the land to the original owners or their descendants. On such arguments, the first respondent would also pray for confirming the order of the learned single Judge dismissing the said Writ Appeal preferred by the Chennai Metropolitan Development Authority.

12. The learned senior counsel for the appellant in W.A.No.2504 of 2004 would submit that Koyambedu Wholesale Market Scheme have been completed in all respects for which the lands acquired was fully utilised and no land has been kept vacant as the lands of the petitioner forming part of the KWMC earmarked for prime commercial purposes; that a part of the land in the scheme is reserved for future allotment such as for construction of additional 321 shops and for allotment of commercial plots to police station, weigh bridge, petrol pump etc. and that it does not mean the lands are not utilised; that the lands were taken over by Tamilnadu Housing Board after the award passed on 31.12.1982 and then transferred to the appellant by Government and all the Revenue Records pertaining to these lands were transferred in favour of the CMDA. On such arguments he would pray to set aside the order of the learned single Judge.

13. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned senior counsel for the appellants in the first two appeals and the learned Government Advocate appearing for the appellants in the third and fourth appeals and the learned senior counsel appearing for the first respondent in the first four appeals and the other counsel as

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well, what comes to be assessed by this Court is that so far as it is concerned with the first four writ appeals, it is pertaining to those lands measuring 5 grounds and 416 sq.ft. earmarked for the acquisition for the purpose of formation of road on payment of compensation, initiating the said acquisition proceedings in the year 1948.

14. While so, the subject matter i.e. the lands, have been left without being utilised for the purpose for which it was acquired and in fact on a request made on the part of the land owners to the Government to re-convey the same, the Government after examining the case in detail by its order made in G.O.Ms.No.48, Municipal Administration and Water Supply Department dated 10.3.1995 in consideration of the amended Sec.48-B of the L.A. Act, passed orders directing the Commissioner of Corporation, Madras, to release the lands in S.No.324/2 of Triplicane Village measuring 5 grounds and 416 sq.ft. on the original land owners or their legal heirs or their nominees.

15. The Government having passed the above Government Order in the manner aforementioned has passed yet another G.O. in four months thereafter cancelling the earlier G.O.Ms.No.48 as per G.O.Ms.No.152, Municipal Administration and Water Supply Department dated 25.7.1995 on ground that the Commissioner, Corporation of Madras in its letter dated 5.6.1995 has stated that the lands under reference could be utilised for parking of vehicles for which there is great demand. This reason assigned on the part of the Government besides being flimsy, the same is not unacceptable in the sense that the lands in question were acquired only for the specific purpose of formation of the road and not otherwise and if the land is not utilised for the purpose for which it is acquired, it cannot be converted for a different purpose just for the simple reason that the Commissioner of Corporation, gives the idea to make use of the lands for the purpose of parking vehicles. It is relevant to consider at this juncture that at the time of acquisition, one of the foremost requirements to be observed on the part of the Government is to see that the purpose for which the property is acquired should be spelt out and that there should not be any ambiguity in declaring the purpose for which the property is acquired and therefore, having acquired the land offering one specific purpose, utilising the land for a different purpose is undesirable and the same is not permissible particularly when the original owner of the land is claiming the release of the land by re-conveyance giving effect to Section 48B of the said Act introduced by Tamil Nadu Amendment Act and therefore, the letter of the Commissioner that it could be utilised for a different purpose of parking the vehicle is not an answer that is acceptable and therefore, needless to mention that the cancellation of the earlier order passed in G.O.Ms.No.48, MAWSD dated 10.3.1995 as per the later G.O.Ms.No.152 MAWSD dated 25.7.1995 is irregular and

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illegal and cannot be sustained in law.

16. A perusal of the order of the learned single Judge dated 24.9.1999 passed in W.P.Nos.6686 and 6687 of 1997 would clearly indicate that the learned single Judge having traced the facts and circumstances of the case and having had his own discussions on all the points raised by both and having answered regarding the vital point for discussion in para No.9 of his order in the following manner:

> "However, since the impugned order is being challenged, it is the duty of this court to consider as to whether the decision taken by the second respondent to utilise the land as a parking place is a bona fide one. As stated already, the lands have been kept vacant for more than 48 years. When the Government ordered re-conveyance under G.O.Ms.No.48 dated 10.3.95. When once that has not been done, in my view, it is not open to the corporation to change the purpose for which the land is to be utilised and seek to keep possession of the land, the traffic hazard is not an over night problem crept in when the Corporation took a decision in June, 1995. When the Corporation took a decision to utilise the land for the construction of an office-cum-shopping complex, the parking problem of the vehicles was in existence. When that be the case, I have no hesitation to come to the conclusion that the decision taken by the Corporation to change the purpose of the utilisation of the place is only to deprive the petitioners from the benefit of the earlier G.O.Ms.No.48 dated 10.3.95."

has ultimately arrived at his conclusion.

17. Having observed in the aforesaid manner for the vital point awaiting answer the learned single Judge would ultimately arrive at the conclusion to allow both the writ petitions filed on the part of the petitioners therein and this Court is not in a position to find any legal infirmity or inconsistency or error apparent on the face of the order of the learned single Judge and therefore, this Court does not find any valid or legal ground to cause its interference into the well considered and merited order passed by the learned single Judge.

18. So far as the judgment cited on the part of the learned senior counsel appearing for the appellant Corporation is concerned it is pertaining to the subject of different High Courts wherein there is no amended provision of law as one introduced by the Tamil Nadu Amendment Act 1996 (Act 16 of 1997) introducing Section 48B after Section 48A of the principal Act which runs as follows:

> "Where the Government are satisfied that the land

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vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

In the absence of the above Section so far as it is concerned regarding the other States particularly the State of Andhrapradesh regarding which the judgment cited from 2004(5) CTC 506 has been delivered by the Honourable Apex Court without application of the said amendment introduced into the Act as aforementioned and therefore, the said judgment cannot hold good to the facts of the case in hand and therefore, the norms of the said judgment become inapplicable to the cases in hand and if a decision has to be taken in consideration of Section 48B of the Land Acquisition Act, undoubtedly this Court has to agree with the order of the learned single Judge thereby allowing the writ petitions and hence in these circumstances the only course that is open for this Court is to dismiss all the first four appeals respectively preferred by the Corporation and the Government.

19. In so far as W.P.No.14154 is concerned, so far as the legal position is concerned by introduction of the Tamil Nadu Amendment into the Land Acquisition Act under Section 48B, the same has to be given effect to as it is decided in the case of the four writ appeals above and since it is a fact that the land acquired for a specific purpose has not been utilised for more than two and half decades for the purpose for which it has been acquired, the first respondent herein has the right to seek to re-convey the same from the Government under Section 48B of the Land Acquisition Act and since the same has not been considered by the Government in spite of many attempts made on the part of the first respondent, he has rightly come forward to file the writ petition in W.P.No.14154 of 2004 and the same has been allowed by the learned single Judge in giving effect to the position of law and in appreciation of the facts and circumstances in the context of the legal position and there is absolutely no reason for this court to cause its interference into the well considered and merited order passed by the learned single Judge in a legal manner and hence the following Judgment:

In result,

(i) all the above Writ Appeals do not merit acceptance and they become only liable to be dismissed and are dismissed accordingly;

(ii) the order of the learned single Judge of this Court dated 24.9.1999 respectively made in W.P.Nos.6686 and 6687 of 1997 and the W.A.No.2504 of 2004 and the order of the learned single Judge of this Court dated 19.5.2004 made in W.P.No.14154 of 2004 thereby

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allowing the said writ petitions are confirmed;

(iii) however, in the circumstance of the case, there shall be no order as to costs;

(iv) consequently, W.A.M.P.No.4598 of 2004 in W.A.No.2504 of 2004 is also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

gr.

To
1. The Secretary to Government of Tamil Nadu Municipal Administration and Water Supply Department, Fort St. George, Chennai-9.
2. The Commissioner,Corporation of Chennai,Chennai-3.
3. The Member Secretary, Chennai Metropolitan Development Authority, Egmore, Chennai-8.
4. The Secretary to Govt.
Govt. of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Chennai 9.
+ 1 CC to M/s.P.Bagyalakshmi, Advocate SR NO 2101
+ 4 Ccs to Mr.R.Syed Mustaffa, Advocate SR NO 1940 TO 1943
+ 2 ccs to Mr.R.Ramanlaal, Advocate SR NO 1888
+ 1 cc to G.P. SR NO 1782

Writ Appeal Nos.2485 and 2487 of 1999, 1696 and 1697 of 2000 and 2504 of 2004 and W.A.M.P.No.4598 of 2004 in W.A.No.2504 of 2004.

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